IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7295 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SAIYED M BHAIBABHAI

Appearance:

MR PRANAV G DESAI for Petitioner No. 1

MR SV PARMAR for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 06/12/2001

ORAL JUDGEMENT

By this petition under Article 227 of the Constitution, the State Road Transport Corporation has challenged the award of the Labour Court, Vadodara in Reference (LCV) No.220 of 1985, whereby the respondent conductor was ordered to be reinstated without backwages and with the punishment of stoppage of three increments with permanent effect. The above order dated 09.01.1990 was, at the time of admission of this petition on 17.07.1991, not stayed and the interim relief prayed by

the petitioner was extremely refused by order of the Division Bench dated 01.04.1992.

2. It was fairly conceded at the outset by the learned counsel for the petitioner that almost 12 years have elapsed after the impugned order and in absence of any injunction against its implementation, the respondent must have by now put in additional service of 12 years, over and above 10 years of service put in before his dismissal. There has been a gap of almost a decade between the date of dismissal i.e. 24.04.1981 and the date of implementation of the order to reinstate after January, 1990 - the period for which backwages are denied by the impugned order substituting punishment of dismissal by the aforesaid lesser punishment.

3. With the above backdrop of facts, it seems from the impugned award that the respondent was dismissed from service after a departmental inquiry into the charge of serious misconduct of not issuing tickets after collection of fare. The charge held to be proved in the departmental inquiry and the legality of the inquiry was not made an issue before the Labour Court. In fact, the respondent admitted the factum of misconduct before the Labour Court, cited his ill-health as the reason and prayed for lesser punishment by the Labour Court in exercise of its power under Section 11-A of the Industrial Disputes Act, 1947.

4. The Labour Court adverted to the fact of 23 previous misconducts in the service record of the respondent as also minor and major punishments imposed upon the respondent in the past. However, in exercise of its power under Section 11-A of the Industrial Disputes Act, 1947 and in order to give one opportunity to the respondent to improve himself, the impugned order was passed.

5. In the peculiar facts and circumstances as above, without commenting upon the propriety of the exercise of power under Section 11-A by the Labour Court in the facts of this case, and as fairly conceded on behalf of the petitioner, it would not be expedient to interfere with the impugned award after 10 years of its implementation. Therefore, the award need not be interfered with and the petition is required to be disposed accordingly.

The petition is, therefore, disposed as rejected. Rule discharged with no order as to costs.

(D.H.Waghela, J)

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'Bhavesh'
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